

AMENDED IN ASSEMBLY JUNE 30, 2005

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE APRIL 28, 2005

**SENATE BILL**

**No. 399**

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**Introduced by Senator Escutia  
(Coauthors: Senators Alquist, Kehoe, Murray, Perata, and  
Romero)**

February 17, 2005

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An act to amend Section 23004.1 of the Government Code, and to amend Section 14124.791 of, and to add Section 14124.792 to, the Welfare and Institutions Code, relating to health services.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Escutia. Health services: 3rd-party liability.

(1) Existing law prescribes procedures under which a provider, beneficiary, or the Director of Health Services may bring an action or claim against a 3rd party who is liable for services rendered to a beneficiary under the Medi-Cal program. Existing law provides that, subject to a prior right of recovery of the director, a provider who has rendered services to a beneficiary because of an injury for which a 3rd party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for the services provided thereto against any judgment, award, or settlement obtained by the beneficiary or the director against that 3rd party if the provider has made a full reimbursement of any fees paid to the department for those services.

This bill would revise these 3rd-party claim procedures. The bill would revise the provider lien procedures to provide that the lien shall be satisfied against the portion of any judgment, award, or settlement relating to past medical expenses obtained by the beneficiary or the director against a 3rd party. The bill would provide instead that the provider may recover only upon proof that the provider has made a full refund of all payments made by the Medi-Cal program to the provider for services rendered to a beneficiary under the Medi-Cal program. The bill would also establish procedures that would apply when there is a dispute between the provider and the beneficiary regarding the amount of a lien asserted.

(2) Existing law provides procedures under which, in any case in which a 3rd person is liable to pay for health services provided by a county to an injured or diseased person, the county may recover from that 3rd person or be subrogated to any right or claim that the injured or diseased person, including identified parties in interest, have against that 3rd person. Under these procedures, the county's right of action abates during the pendency of an action brought for damages against the 3rd person by the injured or diseased person and continues as a first lien against any judgment recovered by the injured or diseased person.

This bill would provide that the county's right of action would continue under this provision as a first lien subordinate to a lien right of the Director of Health Services and, in addition, against any settlement, compromise, arbitration award, mediation settlement, or other recovery obtained by the injured or diseased person. The bill would also provide that a county enforcing a lien under these provisions, a physician or surgeon, or a public hospital as specified, is a provider for purposes of paragraph (1).

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 23004.1 of the Government Code is  
2     amended to read:  
3     23004.1. (a) Subject to Section 23004.3, in any case in which  
4     the county is authorized or required by law to furnish hospital,  
5     medical, surgical, or dental care and treatment, including  
6     prostheses and medical appliances, to a person who is injured or

1 suffers a disease, under circumstances creating a tort liability  
2 upon some third person to pay damages therefor, the county shall  
3 have a right to recover from that third person the reasonable  
4 value of the care and treatment so furnished or to be furnished, or  
5 shall, as to this right, be subrogated to any right or claim that the  
6 injured or diseased person, his or her guardian, personal  
7 representative, estate, or survivors has against that third person to  
8 the extent of the reasonable value of the care and treatment so  
9 furnished or to be furnished.

10 (b) The county may, to enforce rights established under  
11 subdivision (a), institute and prosecute legal proceedings against  
12 the third person who is liable for the injury or disease in the  
13 appropriate court, either in its own name or in the name of the  
14 injured person, his or her guardian, personal representative,  
15 estate, or survivors. This action shall be commenced within the  
16 period prescribed in Section 340 of the Code of Civil Procedure.  
17 In the event that the injured person, his or her guardian, personal  
18 representative, estate, survivors, or any of them brings an action  
19 for damages against the third person who is liable for the injury  
20 or disease, the county's right of action shall abate during the  
21 pendency of that action, and continue as a first lien, subordinate  
22 to the Director of Health Services' lien rights pursuant to Section  
23 14124.74 of the Welfare and Institutions Code, against any  
24 judgment, settlement, compromise, arbitration award, mediation  
25 settlement, or other recovery obtained by the injured or diseased  
26 person, his or her guardian, personal representative, estate, or  
27 survivors, against the third person who is liable for the injury or  
28 disease, to the extent of the reasonable value of the care and  
29 treatment so furnished or to be furnished. When the third person  
30 who is liable is insured, the county shall notify the third person's  
31 insurer, when known to the county, in writing of the lien within  
32 30 days following the filing of the action by the injured or  
33 diseased person, his or her guardian, personal representative,  
34 estate, or survivors, against the third person who is liable for the  
35 injury or disease. However, the failure to so notify the insurer  
36 shall not prejudice the claim or cause of action of the injured or  
37 diseased person, his or her guardian, personal representative,  
38 estate, or survivors, or the county.

(c) A county, in enforcing its lien rights under this section, is subject to subdivisions (d) and (e) of Section 14124.791 of, and Section 14124.792 of, the Welfare and Institutions Code.

SEC. 2. Section 14124.791 of the Welfare and Institutions Code is amended to read:

14124.791. (a) The Legislature finds and declares all of the following:

(1) Granting providers lien recovery rights increases a provider's incentive to participate in the Medi-Cal program, thereby improving a Medi-Cal beneficiary's access to care.

(2) Granting providers lien recovery rights increases a provider's incentive to notify the State Department of Health Services of the existence of third-party liability.

(3) Allowing providers to recover payment from responsible third-party tortfeasors, subject to the provider's full refund to the State Department of Health Services, furthers the goals of the Medi-Cal program to be the payer of last resort, results in savings to the state, and assists the state in carrying out its obligations to identify and recover funds from third parties that are responsible to pay for the care provided to Medi-Cal beneficiaries.

(4) Public hospitals face an overwhelming task in their efforts to provide access to health services and quality care to the indigent and uninsured in the communities they serve. Reductions in federal funding, the cost of care provided in emergency rooms, pressure from providers to increase reimbursement rates, pressure from the state and insurers to reduce costs, and increased regulation to improve patient safety and the quality of care, have put many public hospitals on the brink of closure.

(5) Public hospitals are needlessly constrained in meeting the cost of operations by legal impediments to their ability to recover the reasonable costs of care provided from responsible parties.

(6) It is necessary to allow public hospitals to exercise lien recovery rights relative to an individual that has received free care at a public hospital when that patient receives compensation for the cost of medical expenses resulting from acts of a third party.

(b) Subject to the director's prior right of recovery, a provider who has rendered services to a beneficiary because of an injury for which a third party is liable and who has received payment

1 under the Medi-Cal program shall be entitled to file a lien for all  
2 fees for services provided to the beneficiary against any  
3 judgment, award, or settlement obtained by the beneficiary or the  
4 director against that third party. The lien shall be satisfied against  
5 the portion of any judgment, award, or settlement relating to past  
6 medical expenses obtained by the beneficiary or the director  
7 against any third party. A provider may only recover upon the  
8 lien upon proof that the provider has made a full refund of all  
9 payments made by the Medi-Cal program to the provider for  
10 those services. Proof of making the refund to the department  
11 shall be in the form of a copy of the check to the department and  
12 appropriate representation that the check was mailed to the  
13 department.

14 (c) If either the beneficiary or the director brings an action or  
15 claim against the third party, the party bringing the action shall,  
16 within 30 days of bringing the action, give written notice to any  
17 provider who is eligible to file a lien under subdivision (b) of the  
18 action and of the name of the court or state or local agency in  
19 which the action or claim is brought. Notice shall be given by  
20 personal service or registered mail, and proof of service shall be  
21 filed in the action or claim.

22 (d) (1) The lien shall become perfected when the provider  
23 sends a written notice containing the name and address of the  
24 injured person, the name and location of the provider, and the  
25 ~~amount claimed the amount of all fees of all fees claimed~~ for  
26 services provided, to the beneficiary's attorney, if known, and if  
27 not known, to the beneficiary or the beneficiary's legal  
28 representative and to the director.

29 (2) If notice is given to the beneficiary and the provider  
30 subsequently has notice that the beneficiary has legal  
31 representation, the provider shall also give written notice to the  
32 beneficiary's attorney. The failure to give notice to the  
33 beneficiary's attorney pursuant to this paragraph shall not  
34 invalidate the lien.

35 (3) The written notice required by this subdivision shall be  
36 sent by registered mail.

37 (4) The amount claimed in the notice, or so much of that  
38 amount as can be satisfied from any final judgment, compromise,  
39 or settlement agreement after paying any other medical provider  
40 lien, the priority for which is statutorily required, shall be

1 deemed to be included within any judgment, award, or settlement  
2 unless the judgment, award, or settlement expressly allocates a  
3 lesser amount. Any recovery on the lien shall be limited to that  
4 portion of the judgment, award, or settlement constituting  
5 compensation for past medical expenses.

6 (e) Where a provider is entitled to file a lien under this section,  
7 the third party may not use the amount paid by Medi-Cal to  
8 reduce the amount of its liability. This subdivision shall have no  
9 effect on the rights of parties under Section 3333.1 of the Civil  
10 Code or public agencies under Section 985 of the Government  
11 Code.

12 SEC. 3. Section 14124.792 is added to the Welfare and  
13 Institutions Code, to read:

14 14124.792. (a) If the beneficiary has filed a third-party action  
15 or claim, the court where the action or claim was filed shall have  
16 jurisdiction over a dispute between the provider and the  
17 beneficiary regarding the amount of a lien asserted pursuant to  
18 this section that is based upon an allocation of damages  
19 contained in a settlement or compromise of the third-party action  
20 or claim. If no third-party action or claim has been filed, any  
21 superior court in California where venue would have been proper  
22 had a claim or action been filed shall have jurisdiction over the  
23 motion. The motion may be filed as a special motion and treated  
24 as an ordinary law and motion proceeding and subject to regular  
25 motion fees. The reimbursement determination motion shall be  
26 treated as a special proceeding of a civil nature pursuant to Part 3  
27 (commencing with Section 1063) of the Code of Civil Procedure.  
28 When no action is pending, the person making the motion shall  
29 be required to pay a first appearance fee. When an action is  
30 pending, the person making the motion shall pay a regular law  
31 and motion fee.

32 (b) In any motion filed pursuant to subdivision (a), all of the  
33 following shall apply:

34 (1) The provider asserting a lien pursuant to Section  
35 14124.791 and the beneficiary shall be made a party to the  
36 motion, and either the beneficiary or the provider may file the  
37 motion. In cases where the third-party claim was tried to a  
38 verdict or judgment, the motion shall be heard by the trial judge,  
39 if available. In cases where an action has been filed and settled or  
40 otherwise resolved prior to verdict or judgment, the motion shall

1 be heard by the judge to whom the matter was assigned, or, if no  
2 judge was assigned or the assigned judge is unavailable, in the  
3 regular law and motion department or by a judge assigned to hear  
4 the matter. When no action has previously been filed, the motion  
5 shall be assigned and heard pursuant to the regular law and  
6 motion procedures in the court where the motion is filed.

7 (2) Within 14 days of a request from a provider, the  
8 beneficiary shall serve a true and correct copy of those portions  
9 of the settlement document upon which the asserted allocation is  
10 based that are relevant to the determination motion. If not  
11 requested by a provider, a true and correct copy of those portions  
12 of the settlement document on which the asserted allocation is  
13 based that are relevant to the determination motion shall be  
14 served with the motion.

15 (3) (A) If the beneficiary is the moving party, notice of the  
16 motion shall be addressed to any counsel representing the  
17 provider on the lien, if known, and if not known, to the provider  
18 at the provider's address as shown on the notice of lien. If the  
19 provider is the moving party, notice of the motion shall be  
20 addressed to the beneficiary's counsel, if known. If the  
21 beneficiary is not represented by counsel, the notice of motion  
22 shall be mailed to the beneficiary by registered mail. Proof of  
23 service in compliance with this subdivision shall be filed with the  
24 court. Notice shall also be given to counsel for the third party, or  
25 to the third party if not represented by counsel, in the underlying  
26 action.

27 (B) Notice required under this paragraph shall be given  
28 pursuant to subdivision (b) of Section 1005 of the Code of Civil  
29 Procedure.

30 (4) If the beneficiary is represented by counsel, the beneficiary  
31 shall bear the burden of proof as to the fairness of the allocation  
32 and the burden of producing evidence, by declaration or other  
33 written form, as to the manner in which the allocation was made  
34 and the evidentiary basis for the allocation. If the beneficiary is  
35 not represented by counsel, the party making the motion shall  
36 bear the burden of proof as to the fairness of the allocation and  
37 the burden of producing evidence, by declaration or other written  
38 form, as to the manner in which the allocation was made and the  
39 evidentiary basis for the allocation.

1 (5) In determining the fairness of the allocation, the court shall  
2 consider the relationship of damages for past medical expenses to  
3 the total damages claimed and the total amount of the settlement.

4 (6) The court shall issue its findings, decision, and order,  
5 which shall be considered the final determination of the parties'  
6 rights and obligations with respect to the provider's lien, unless  
7 the settlement is contingent on an acceptable allocation of the  
8 settlement proceeds, in which case, the court's findings, decision,  
9 and order shall be considered a tentative determination. If the  
10 beneficiary does not serve notice of a rejection of the tentative  
11 determination, which shall be based solely upon a rejection of the  
12 contingent settlement, within 30 days of the notice of entry of the  
13 court's tentative determination, subject to further consideration  
14 by the court pursuant to paragraph (7), the tentative  
15 determination shall become final.

16 (7) If the beneficiary does not accept the tentative  
17 determination, which shall be based solely upon a rejection of the  
18 contingent settlement, any party may subsequently seek further  
19 consideration of the court's findings upon application to modify  
20 the prior findings, decision, or order, based on new or different  
21 facts or circumstances. The application shall include an affidavit  
22 showing what application was made before, when, and to what  
23 judge, what order or decision was made, and what new or  
24 different facts or circumstances, including a different settlement,  
25 are claimed to exist. Upon further consideration, the court may  
26 modify the allocation in the interest of fairness and for good  
27 cause.

28 (c) Any person, firm, or corporation, including, but not limited  
29 to, an insurance carrier, who receives notice of a lien asserted  
30 pursuant to this section and who makes any payment to the  
31 injured person, or to his or her attorney, heirs, or legal  
32 representative, for the injuries the beneficiary sustained, after  
33 receipt of this notice, without paying to the provider the amount  
34 the provider is entitled to receive as payment on its lien, shall be  
35 liable to the provider for that amount.

36 (d) The amount paid to the provider by Medi-Cal shall not be  
37 considered in the determination of the amount of a provider's  
38 lien or in the determination of the amount of the third-party  
39 tortfeasor's liability to the beneficiary. This provision overturns  
40 *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635, to the



1 extent that case is inconsistent with this provision. This provision  
2 is declarative of existing law as stated in *Helfend v. Southern Cal*  
3 *Rapid Transit Dist.* (1970) 2 Cal.3d 1.

4 (e) When a final judgment in the third-party claim includes a  
5 special finding by a judge, jury, or arbitrator that the beneficiary  
6 was partially at fault, the provider's lien shall be reduced by the  
7 same comparative fault percentage by which the beneficiary's  
8 recovery for past medical expenses was reduced.

9 (f) At the request of the beneficiary, the court or arbitrator in  
10 the third-party action or claim shall provide for special findings  
11 with respect to compensation allocated to past medical expenses.

12 (g) The provider's lien shall be reduced by the pro rata amount  
13 commensurate with the beneficiary's reasonable attorney's fees  
14 and costs in accordance with the common fund doctrine. The  
15 amount of the reduction in the provider's lien pursuant to this  
16 subdivision shall accrue solely to the benefit of the beneficiary  
17 and shall not constitute additional attorney's fees and costs owed  
18 or payable to the beneficiary's attorney.

19 (h) If any provision of this section, or the application of any  
20 provision of this section to any person, firm, corporation, or other  
21 entity or to any circumstance or situation, shall be held invalid,  
22 the remaining provisions of this section shall not be affected  
23 thereby, and shall be given effect.

24 (i) No claim authorized by this section shall be permitted to  
25 the extent that the claim would reduce the director's right to  
26 recover pursuant to Section 14124.78. However, the  
27 department's receipt of the provider's refund pursuant to  
28 subdivision (b) of Section 14124.791 shall extinguish the  
29 director's claims for the same services. Section 1008 of the Code  
30 of Civil Procedure does not apply to any motion filed pursuant to  
31 subdivision (a).

32 (j) As used in this section, "provider" means any of the  
33 following:

34 (1) A county enforcing a lien pursuant to Section 23004.1 of  
35 the Government Code.

36 (2) A physician or surgeon required to be licensed under  
37 Section 2050 of the Business and Professions Code.

38 (3) A hospital that meets the requirements for placement on  
39 the disproportionate share list pursuant to subdivision (e) of  
40 Section 14105.98.

- 1     (4) Any public hospital, including a hospital operated under
- 2     the auspices of *the state or* a county or other local government.

O